

ESTTA Tracking number: **ESTTA238898**

Filing date: **09/25/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91185556
Party	Defendant Michael D'Souza
Correspondence Address	Jon A. Schiffrin Jon A. Schiffrin, P.C. 10617 Jones Street, Suite 301-A Fairfax, VA 22030 UNITED STATES schiffrinlaw@aol.com
Submission	Motion to Amend Application
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Date	09/25/2008
Attachments	Motion0001.pdf (3 pages)(147075 bytes) Memorandum0001.pdf (4 pages)(128569 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Laboratories Expanscience.,

v.

Michael D'Souza,

Opposer,

Applicant.

Opposition No. 91/185,556
Serial No. 77/336,431

MOTION TO AMEND APPLICATION

Applicant, Michael D'Souza ("Applicant") moves to amend his application for MUFTI and Design, Serial No. 77/336,431, under 37 CFR Section 2.133(b). The reasons for the amendment are set forth in the accompanying memorandum.

Applicant moves to delete Class 3 cosmetics from his application, leaving the application as follows:

Bands of leather; Briefcases; Hat boxes of leather; Imitation leather; Imitation leather key chains; Imitation leather sold in bulk; Key-cases of leather and skins; Leather; Leather and imitation leather; Leather and imitation leather bags; Leather bags for merchandise packaging; Leather bags, suitcases and wallets; Leather boxes for storing greeting cards; Leather briefcases; Leather cases; Leather cases for keys; Leather for furniture; Leather for harnesses; Leather for shoes; Leather handbags; Leather key cases; Leather key chains; Leather pouches; Leather purses; Leather shopping bags; Leather shoulder belts; Leather sold in bulk; Leather straps; Leather thongs; Leather thread; Pet accessories, namely, specially designed canvas, vinyl or leather bags attached to animal leashes for holding small items such as keys, credit cards, money or disposable bags for disposing of pet waste; Pet accessories, namely, canvas, vinyl and leather pouches for holding disposable bags to place pet waste in; Pouches of leather; Saddlery of leather; Tanned leather; Thongs; Travelling cases of leather, in Class 18;

Furniture, in Class 20;

Covered rubber yarn fabrics; Curtain loops of textile material; Curtains made of textile fabrics; Curtains of textile or plastic; Fabrics for textile use; Face towels; Felt and non-woven textile fabrics; Gift wrap of textile; Hand towels of textile; Hand-towels made of textile fabrics; Handkerchiefs of textile; Handkerchiefs of textiles; Non-woven textile fabrics; Place mats of textile material; Printed textile labels; Quilts of textile; Serviettes of textile; Table linen of textile; Table napkins of textile; Tablecloths of textiles; Tapestries of textile; Textile fabric of animal skins imitations; Textile fabrics for home and commercial interiors; Textile fabrics for lingerie; Textile fabrics for the manufacture of clothing; Textile goods, namely, a synthetic sheet with fragrance for the purpose of inserting into pillow slip and under fitted sheet to emit fragrance; Textile handkerchiefs; Textile hang tags; Textile labels; Textile napkins; Textile napkins for removing make-up; Textile place mats; Textile printers' blankets; Textile serviettes; Textile signage panels; Textile substitute materials made from synthetic materials; Textile tablecloths; Textile tissues for removing make-up; Textile used as lining for clothing; Textile wall hangings; Textile wall hangings, namely, cloth posters; Textiles for dye-sublimation printing ; Towels; Wall hangings of textile; Wavy fiber textiles, in Class 24; and

Swaddling clothes; Ties; Tops; Triathlon clothing, namely, triathlon tights, triathlon shorts, triathlon singlets, triathlon shirts, triathlon suits; Underarm clothing shields; Wraps; Clothing, namely, wrap-arounds; Corsets; Dusters; Foulards; Hoods; Infant and toddler one piece clothing; Infant cloth diapers; Jerseys; Leather belts; Mantles; Mufflers; Non-disposable cloth training pants; Paper hats for use as clothing items; Parts of clothing, namely, gussets for tights, gussets for stockings, gussets for bathing suits, gussets for underwear, gussets for leotards and gussets for footlets; Perspiration absorbent underwear clothing; Shifts; Short sets; Shoulder wraps; Belts; Bibs not of cloth or paper; Caps; Children's and infants' cloth bibs; Children's cloth eating bibs; Cloth bibs; Cloth bibs for adult diners; Cloth bibs for use by senior citizens or physically- or mentally-challenged persons; Cloth diapers; Clothing for wear in judo practices; Clothing for wear in wrestling games; Clothing, namely, arm warmers; Clothing, namely, folk costumes; Clothing, namely, hand-warmers; Clothing, namely, knee warmers; Clothing, namely, neck tubes; Clothing, namely, thobes, in Class 25.

Opposer, Laboratoires Expanscience, has only opposed Applicant's application in Class 3. Accordingly, Applicant respectfully requests the Board allow the deletion of Class 3, and dismiss

Opposer's opposition without prejudice as to the remaining goods
in the application.

Respectfully submitted,

MICHAEL D'SOUZA

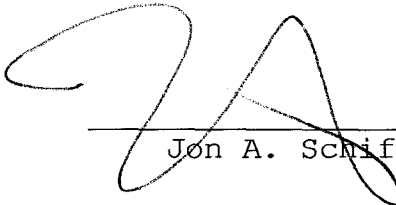
Date: 9/25/08

By: 

Jon A. Schiffrin
Attorneys for Applicant
Jon A. Schiffrin, P.C.
10617 Jones Street, Suite 301-A
Fairfax, Virginia 22030
(703) 385-8333

CERTIFICATE OF SERVICE

It is hereby certified that this Motion to Amend
Application has been served upon Opposer, by mailing a copy
thereof by prepaid first class mail to William C. Wright, Esq.,
Epstein Drangel Bazerman & James, LLP, 60 East 42nd Street, Suite
820, New York, New York 10165, this 25th day of
September, 2008.


Jon A. Schiffrin

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Laboratories Expanscience.,

Opposer,

v.

Michael D'Souza,

Applicant.

Opposition No. 91/185,556
Serial No. 77/336,431

MEMORANDUM IN SUPPORT OF
MOTION TO AMEND APPLICATION

Applicant, Michael D'Souza ("Applicant") moves to amend his application for MUFTI and Design, Serial No. 77/336,431, under 37 CFR Section 2.133(b). Opposer has not consented to this motion. Applicant believes he is entitled to registration for the mark as amended.

Under Section 2.133(b), an applicant is permitted to amend the identification of goods and services in its application during an *inter parties* proceeding. Brunswick Corp. v. British Seagull Ltd., 35 F.3d 1527 (Fed. 3d. Cir. 1994); TBMP Section 514.

Accordingly, Applicant deletes **Class 3 for cosmetics** from his application.

By deleting Class 3 from his application, Applicant is not expanding the original identification of goods. This is a proper way of limited the scope of the original identification of goods. 37 CFR Section 2.71. No addition to the original identification of goods has been made, and this amendment should be appropriate under 37 CFR Section 2.133(b).

The intent of Section 2.133(b) is to resolve issues of likelihood of confusion by allowing an amendment to an identification of goods. Personnel Data Systems v. Parameter Driven Software, 20 USPQ2d 1863 (TTAB 1991). See also Space Base v. Stadis Corp., 17 USPQ2d 1216 (TTAB 1990) [stating that an applicant can restrict an identification of goods if that restriction will avoid a likelihood of confusion].

In this case, the deletion of Class 3 from the application will clearly avoid a likelihood of confusion between the parties' marks because Opposer, Laboratoires Expanscience, has only opposed Applicant's use of MUFTI and Design in Class 3. See Exhibit A. By deleting the only opposed class, applicant has addressed and resolved the only claim of likelihood of confusion raised by Opposer.

Accordingly, Applicant respectfully requests that the Board allow him to amend his application for MUFTI and Design to

Opposition No. 91/185,556
Memorandum in Support of Motion to Amend Application

delete Class 3, to dismiss Opposer's opposition without
prejudice, and allow his application to proceed to registration.

Respectfully submitted,

MICHAEL D'SOUZA

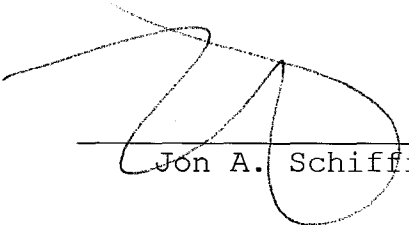
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Jon A. Schifffrin

ESTTA Tracking number: **ESTTA227778**Filing date: **08/01/2008**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	LABORATOIRES EXPANSCIENCE
Granted to Date of previous extension	08/09/2008
Address	10, avenue de l'Arche F-92400 COURBEVOIE, FRANCE
Attorney information	William C. Wright Epstein Drangel Bazerman & James, LLP 60 East 42nd Street, Suite 820 New York, NY 10165 UNITED STATES mail@ipcounselors.com

Applicant Information

Application No	77336431	Publication date	06/10/2008
Opposition Filing Date	08/01/2008	Opposition Period Ends	08/09/2008
International Registration No.	NONE	International Registration Date	NONE
Applicant	michael d'souza mufti 789 fulham road london , sw65hd, UNITED KINGDOM		

Goods/Services Affected by Opposition

Class 003. Opposed goods and services in the class: Cosmetics
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Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Other	no bona fide intent

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3019551	Application Date	06/06/2002
Registration Date	11/29/2005	Foreign Priority Date	NONE